

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THE ESTATE OF DOROTHY THOMSON

v.

TOYOTA MOTOR CORP., ET AL.

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Civil No. JFM-08-2467

MEMORANDUM

The Estate of Dorothy Thomson, plaintiff, has filed suit against Toyota Motor Corporation (“TMC”) and Thrifty Rent-a-Car Service, Inc. (“Thrifty”), for claims arising from an automobile accident in South Africa that occurred while Thomson was traveling in a Toyota Condor automobile, rented from a licensee of Thrifty. Thomson died shortly after the accident.

Now pending are motions to dismiss by defendants TMC and Thrifty.¹ On May 18, 2009, I asked the parties to submit supplemental memoranda concerning possible transfer of this case to the Middle District of Florida. The parties did so, and, the issues having been fully briefed, no hearing is necessary. Local Rule 105.6.

For the reasons stated below, TMC’s motion to dismiss is granted, and Thrifty’s motion to dismiss is denied. However, plaintiff’s action against Thrifty will be transferred to the Middle District of Florida, where presumably summary judgment will be entered in favor of Thrifty in accordance with the prior ruling made by that court.

¹Plaintiff has moved to stay the proceedings pending the outcome of a related action in the United States District Court for the Middle District of Florida. Plaintiff’s motion is denied as moot, as the Florida district court has granted summary judgment in favor of Thrifty.

I.

In September 2005, Thomson was on vacation in South Africa with her daughter, Colleen Miller; Colleen's son and daughter-in-law, Jerame and Rita Miller; and Jerame and Rita Miller's two children, Cori and Madison. Rita Miller rented a Toyota Condor from Safy Trust, a licensee of Thrifty Car Rentals,² at the airport in Port Elizabeth, South Africa. Jerame Miller was driving the Condor when the accident, allegedly caused by a brake malfunction or failure, occurred. The occupants of the vehicle were injured, and Madison Miller was life flighted from the scene.³ Thomson died shortly thereafter, allegedly from injuries resulting from the accident.

Four other lawsuits arising out of this accident have been brought against TMC and Thrifty in three other jurisdictions by various occupants of the car and Colleen Miller's husband. *See Estate of Dorothy Thomson v. Toyota Motor Corp.*, No. 06-2431 (N.D. Ohio); *Estate of Madison Miller v. Toyota Motor Corp.*, No. 07-1358 (M.D. Fla.); *Michael Miller v. Toyota Motor Corp.*, No. 07-3549 (N.D. Ohio); and *Colleen Miller v. Toyota Motor Corp.*, No. 08-1613 (D.D.C.).

II.

TMC, a Japanese corporation, moves to dismiss based on lack of personal jurisdiction, improper venue, and insufficient service of process.⁴ As plaintiffs recognize, because the cause

²Plaintiff claims that Thrifty is vicariously liable for the conduct and actions of Safy Trust. Safy Trust is not a defendant.

³Tragically, the life flight helicopter carrying Madison Miller crashed into the side of a mountain, killing Madison and the crew of the helicopter.

⁴Because I dismiss the claims against TMC for lack of personal jurisdiction, I need not consider the latter arguments.

of action against TMC is unrelated to its alleged contacts with Maryland, specific jurisdiction cannot exist. The issue, then, is whether the contacts of TMC and/or its subsidiaries in Maryland are sufficient to subject TMC to general jurisdiction in this court.⁵ See *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 878 A.2d 567, 580 (Md. 2005) (“If the defendant’s contacts with the State are not the basis for the suit, then jurisdiction over the defendant must arise from the defendant’s general, more persistent contacts with the State.”).

“To establish ‘general jurisdiction’ over a foreign corporation, the plaintiff must show that the corporation’s activities in the state are ‘continuous and systematic,’ which is a more demanding standard than is necessary for establishing ‘specific jurisdiction.’” *Consulting Eng’rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 276 n.3 (4th Cir. 2009) (quoting *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002)). To satisfy constitutional due process, a foreign defendant must have sufficient “minimum contacts” with the state such that “the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citation omitted).

TMC is a Japanese corporation with its principal place of business in Japan. (See Def. TMC Mot. to Dismiss, Ex. 1 ¶ 4.) TMC does not design, manufacture, market, or sell Toyota motor vehicles in the continental United States.⁶ (See *id.* ¶¶ 6, 9-11, 16-17.) TMC maintains no

⁵The plaintiff bears the burden of showing that the court has personal jurisdiction over each defendant. See *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 396 (4th Cir. 2003). Because I am ruling on the basis of the motions papers alone, plaintiff need make only a prima facie showing of personal jurisdiction. *Id.* In deciding whether a plaintiff has met this burden, “the court must take all disputed facts and reasonable inferences in favor of the plaintiff.” *Id.*

⁶These functions are carried out by Toyota Motor Sales, U.S.A., Inc. (“TMS”).

agents or representatives in Maryland, does not target specific marketing at the residents of Maryland, does not own or lease real estate in Maryland, and does not solicit sales for Toyota motor vehicles in Maryland. (*See id.* ¶¶ 8, 11, 13, 16.) TMC does not control the distribution of vehicles in the continental United States. (*Id.* ¶ 29.)

In response, plaintiff claims that TMC is a “multinational company that is heavily involved in the United States economy.” (Pl.’s Opp’n to Def. TMC’s Mot. to Dismiss 2.) In doing so, plaintiff intentionally blurs the line between TMC and two other corporations that are not defendants in this litigation: Toyota Motor North America, Inc. (“TMA”), a subsidiary of TMC headquartered in New York and the holding company for Toyota’s North American sales, engineering, and manufacturing operating units, and Toyota Motor Sales, U.S.A., Inc. (“TMS”), a California corporation that is the exclusive importer of Toyota vehicles into the United States and a distributor of Toyota motor vehicles in Maryland. (Def. TMC Mot. to Dismiss, Ex. 2 ¶ 3; Pl.’s Opp’n to Def. Toyota’s Mot. to Dismiss, Ex. 4.)

Turning first to TMA, plaintiffs correctly point out that TMA is the North American subsidiary of TMC. However, “it is generally the case that the contacts of a corporate subsidiary cannot impute jurisdiction to its parent entity.” *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 276 (4th Cir. 2005). In Maryland,⁷ the “agency” test is used for determining whether to pierce the veil for personal jurisdictional purposes. *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 61 (4th Cir. 1993) (refusing to exercise personal jurisdiction over a parent corporation even though its subsidiary conducted business in Maryland). The central question under the agency

⁷The law of the forum state is used in determining whether the corporate veil should be pierced for purposes of establishing personal jurisdiction. *See Burns & Russell Co. of Baltimore v. Oldcastle, Inc.*, 198 F. Supp. 2d 687, 697 (D. Md. 2002).

test “is whether significant decisions of the subsidiary must be approved by the parent.” *Id.*

Other considerations include whether parent and subsidiary maintain separate books, records, accounting procedures, and hold separate directors’ meetings. *Id.* Also relevant is the level of interdependence between parent and subsidiary, and whether the subsidiary has an independent reason for existence other than for the purpose of doing the parent’s bidding. *Id.*

Here, plaintiffs do not allege that TMC must approve significant decisions of TMA. The uncontroverted affidavits of Kojiro Tanaka of TMC and Jeffrey Roman of TMA aver that TMA officers and directors make the decisions regarding the day-to-day operations of TMA, and, because TMA is not involved in the design, manufacture, or testing of motor vehicles, TMA receives no instructions from TMC in those areas. (Def. TMC Mot. to Dismiss, Ex. 1 ¶ 30; *id.* Ex. 3 ¶¶ 12, 13.) TMA maintains separate from TMC its own corporate books, financial records, bank accounts, board of directors, work force, and managerial and supervisory personnel. (*Id.* Ex 1 ¶¶ 22, 24-25, 27-28; *id.* Ex. 3 ¶¶ 7-11.)

Plaintiff points out that two employees served in positions at TMC while also serving in positions at TMA. Jim Press served simultaneously as president of TMA and as a senior managing director of TMC. (Pl.’s Opp’n to TMC’s Mot. to Dismiss, Ex. 4.) Similarly, Shigeru Hayakawa served simultaneously as president of TMA and a managing officer of TMC. (*Id.* Ex. 3.) However, this alone is not sufficient to establish that the parent, TMC, exercised sufficient control (or, indeed, any control) over the activities of the subsidiary, TMA. *Cf. In re Lupron Mktg. & Sales Practices Litig.*, 245 F. Supp. 2d 280, 293 (D. Mass. 2003) (*quoting Alderson v. S. Co.*, 747 N.E.2d 926, 944 (Ill. App. Ct. 2001)) (“‘[S]tanding alone, the existence of common officers or directors serving both corporations is not sufficient to confer jurisdiction over a nonresident parent corporation.’ It is only when a subsidiary is acting as an agent of the parent

corporation in the sense that the subsidiary is conducting the parent's business instead of its own that Illinois courts find the corporate veil subject to piercing.”).

Turning next to TMS, the uncontroverted evidence is that TMC and TMS maintain their own corporate books and financial records, hold their own bank accounts and file their own tax returns, maintain their own board of directors, and maintain separate managerial and supervisory personnel. (Def. TMC Mot. to Dismiss, Ex. 1 ¶¶ 20-28; *id.* Ex. 2 ¶¶ 5-10.) Because TMS is not involved in the design or manufacture of vehicles, it receives no instructions from TMC in those areas. (*Id.* Ex. 1 ¶ 30.)

For these reasons, I conclude that plaintiff has failed to make a sufficient showing that TMS and/or TMA are “alter egos” of TMC. This finding comports with other judicial decisions rendered in similar cases brought by Thomson and her family members against TMC in other jurisdictions. *See, e.g., Miller v. Toyota Motor Corp.*, --- F. Supp. 2d ----, 2009 WL 153168 (D.D.C. June 2, 2009) (rejecting plaintiff's alter ego theory and concluding that the court lacked personal jurisdiction over TMC); *Estate of Dorothy Thomson v. Toyota Motor Corp. Worldwide*, No. 06-2431, 2007 WL 1795271 (N.D. Ohio June 19, 2007) (“The plaintiffs do not present any evidence or arguments asserting that the companies are so closely related as to be considered the same, and in fact ignore the distinction between the companies altogether. It is apparent that TMS is not merely an alter ego of TMC, and its presence in Ohio cannot subject TMC to jurisdiction there.”), *aff'd* by 545 F.3d 357, 363 (6th Cir. 2008) (finding that “the record supports the district court's conclusion that TMS and TMC are not alter egos”); *Estate of Miller v. Toyota Motor Corp.*, No. 07-1358, 2008 WL 4525058, at *5 (M.D. Fla. Oct. 6, 2008) (concluding that “TMC's subsidiaries do not function as alter-egos”); *Michael Miller v. Toyota Motor Corp.*, No. 07-3549, slip op. at 6 (N.D. Ohio Sept. 12, 2008) (“The plaintiff does not present any evidence

or arguments asserting that the companies are so closely related as to be considered the same. It is apparent that TMS is not merely an alter ego of TMC, and its presence in Ohio cannot subject TMC to jurisdiction there.”).⁸

Under these circumstances, I conclude that this court lacks personal jurisdiction over TMC.⁹ I decline to transfer this case because, on the basis of the record before me, there appears to be no United States federal court in which an action could have been brought against TMC. The case against TMC is dismissed.

III.

Thrifty has moved to dismiss based on *forum non conveniens*, improper venue, res judicata, collateral estoppel, and lack of personal jurisdiction. I conclude that the interests of justice, judicial economy, and avoidance of duplicative litigation support transfer of plaintiff’s claims against Thrifty to the Middle District of Florida pursuant to 28 U.S.C. § 1404(a).

Under Section 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” To determine whether a transfer would be appropriate under Section

⁸For a discussion of the jurisdictional analysis conducted in these related cases, see *Miller v. Toyota Motor Corp.*, --- F. Supp. 2d ----, 2009 WL 1531658 (D.D.C. June 2, 2009).

⁹In its opposition to TMC’s Motion to Dismiss, plaintiff requests jurisdictional discovery as to TMC’s contacts with Maryland. (Pl.’s Opp’n to Def. TMC’s Mot. to Dismiss 4-5.) I will deny this request, as it appears to be an unfounded fishing expedition. While discovery is “broad in scope and freely permitted,” “[w]hen a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery.” *Carefirst*, 334 F.3d at 402; see also *Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C. 1988) (“[W]here a plaintiff’s claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by defendants, the Court need not permit even limited discovery confined to issues of personal jurisdiction should it conclude that such discovery will be a fishing expedition.”).

1404(a), the court is to consider the following factors: (1) plaintiff's choice of forum; (2) witness convenience and access; (3) convenience to the parties; and (4) the interest of justice. *Cross v. Fleet Reserve Ass'n Pension Plan*, 383 F. Supp. 2d 852, 856 (D. Md. 2005). Here, neither party objects to transfer of the case. In fact, plaintiff "believes that transfer would further the interests of judicial economy." (Pl.'s Brief Addressing Substantive Legal Issues 1.) Therefore, plaintiff's choice of forum is afforded little weight. As to the second and third factors, no parties or witnesses are located in the state of Maryland.¹⁰

In determining that the Middle District of Florida is the appropriate forum for transfer, the interest of justice weighs heavily. Two identical cases, arising from the same accident in South Africa, are currently being litigated in the Middle District of Florida. A case brought by Thomson's daughter, Colleen Miller, was recently transferred there by the District Court for the District of Columbia. *Miller v. Toyota Motor Corp.*, --- F. Supp. 2d ----, 2009 WL 1531658 (D.D.C. June 2, 2009). In another action before the Florida district court, four of the six passengers riding in the vehicle at the time of the accident, as well as Colleen Miller's husband, are plaintiffs.¹¹ *See id.* at *7. Three of the plaintiffs now reside in Florida. Therefore, transfer of this case will "prevent the waste of time, energy and money as well as [] protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Lynch v. Vanderhoeft Builders*, 237 F. Supp. 2d 615, 617 (D. Md. 2002) (internal quotation marks and citations omitted).

¹⁰Plaintiff is an estate administered under the laws of Ohio. TMC is a Japanese corporation with its principal place of business in Japan. Thrifty is incorporated in Oklahoma with its principal place of business in Oklahoma.

¹¹Moreover, I anticipate that the Florida court will grant summary judgment in favor of Thrifty and this case can thus be consolidated with the Florida case for appellate purposes.

For the foregoing reasons, I deny plaintiff's motion to stay the proceedings and deny plaintiff's request for jurisdictional discovery. I grant defendant TMC's motion to dismiss, deny Thrifty's motion to dismiss, and transfer plaintiff's claims against Thrifty to the U.S. District Court for the Middle District of Florida. A separate order to that effect is being entered herewith.

June 12, 2009

/s/ _____
J. Frederick Motz
United States District Judge